

BOARD OF ENVIRONMENTAL PROTECTION
Meeting Minutes

March 3, 2005

A meeting of the Board of Environmental Protection was held on Thursday, March 3, 2005, at the Holiday Inn / Ground Round in Augusta, Maine. Richard Wardwell, Chair, called the meeting to order at 9:00 a.m. with the following individuals present:

Board: Ernest Hilton, Nancy Anderson, Irving Faunce, Virginia Plummer, Donald Guimond, Richard Wardwell, Nancy Ziegler and Matt Scott

Absent: Jean T. Wilkinson

Staff: Bureau of Air Quality
Bureau of Land and Water Quality
Bureau of Land and Water Quality

Deb Avalone-King
Robin Clukey
Judy Gates

Others: David P. Littell, Deputy Commissioner
Carol Blasi, Assistant Attorney General
Cynthia Bertocci, Executive Analyst
Terry Hanson, Administrative Assistant

(Meeting adjourned at approximately 3:00 p.m.)

Draft

I. DEPARTMENTAL

A. COMMISSIONER'S COMMENTS: Deputy Commissioner David Littell reported the following:

Anne S. Hannum: The Department received a copy of the Superior Court decision regarding the application of Anne S. Hannum to construct a private recreational dock. The Court found in favor of the Petitioner. The Department may ask the Board to enter into Executive Session in the near future to discuss the decision and next steps.

Clean Car Program: The Zero Emission Vehicle rule that was provisionally adopted by the Board may be amended through the Legislative hearing process. The auto manufacturers have provided confidential information regarding their inability to comply with Maine's proposed rule. The Governor has asked the auto manufacturers to work with the Department on possible amendments to the rule that would retain the California program and support continued improvement in air quality for Maine's citizens. The Department will provide a briefing to the Board regarding possible outcomes and amendments.

Questions: Board member Ernest Hilton asked how amendments to the provisionally adopted rule would fit with compliance of the California rule.

Deputy Commissioner stated that the Department has been meeting with representatives of the auto manufacturers and the auto manufacturers believe that amendments they want would be consistent with the California rule, however the details have not been provided to the Department. Auto manufacturers request that Maine's rule contain credit provisions similar to those of Connecticut and Rhode Island. The auto manufacturers have stated that they will not modify production to comply with Maine's rule since Maine is not a large share of the market. DEP will continue to work on this matter maintaining the goal of compliance with the California standard.

Question: Board member Irving Faunce asked about the status of registration denial. *The Department discussed the draft legislation dealing with registration denial with the Secretary of State's Office, Maine Municipal Association and Town Clerks. All were strongly opposed to policing such a provision if it were enacted. The Secretary of State did agree to consider an administrative process whereby Motor Vehicles would provide the Department with information on cars registered in Maine that the Department could use to identify non-compliant cars for possible enforcement action. The Department is continuing to pursue this approach with the Secretary of State's Office along with an enforcement process for this violation.*

Question: Chairman Wardwell asked about the basis of the strong opposition to registration denial, noting that municipal clerks already police for insurance requirements through registration denial.

Deputy Commissioner agreed with Mr. Hilton's observation that insurance is a less complicated issue since persons can buy the required insurance; whereas, they cannot return a car which has already been purchased. To deny registration of a car may very well create a hostile environment for municipal officials. Additionally, until New Hampshire adopts the California car program, the registration of non-California cars will remain a problem that is difficult to address. When New Jersey and Canada finalize their rulemaking initiatives, New Hampshire will be the only entity in the Northeast that has not adopted the California standard. The market may well bring California cars to New Hampshire. In weighing these factors, the Department judged that it was best to withdraw the registration denial bill.

Vernal Pools: The Bill to protect vernal pools has passed out of committee and is now before the full legislature. If passed, the bill will require joint DEP and Department of Inland Fish and Wildlife rulemaking.

Question: Board member Matt Scott asked about mapping and delineation of vernal pools.

David Littell explained that the Bill allows for mapping by certified wetlands scientists of vernal pools. Details will be finalized in rulemaking. The rules will be major substantive.

Budget: The Department has finalized its budget reductions for the remaining 0.5 million dollars each year through the elimination of 7 positions at the Department. Those positions are 1-Director, 4-Clerks, 1-GIS coordinator, 1-IT position. All staff people impacted have been notified. The Department may need to eliminate 5-6 additional positions in the next round of budget reductions due to reductions in the President's proposed environmental budget requests.

Board Jurisdictional Requests: In response to earlier discussions related to requests for Board jurisdiction, Deputy Littell informed the Board that two such requests were received by the Commissioner: a) Union Gas Dam Removal on Messalonskee Stream and b) Georgia-Pacific biomass boiler in Old Town. Further information regarding the Department's recommendation will be provided to the Chair. Processing of requests for Board jurisdiction will be the subject of a workshop in the near future.

B. CHAIRMAN'S COMMENTS: None

C. EXECUTIVE ANALYST COMMENTS:

The Executive Analyst reminded the Board that the Mere Point boat ramp public hearings scheduled for March 28th and 29th will begin at 8:00a.m. in Brunswick. Rebuttal testimony is due March 7th, and will be forwarded to Board members prior to the hearing.

D. BOARD CALENDAR: Reviewed

E. DEPARTMENTAL ORDERS: Reviewed

F. EXECUTIVE SESSION: None

II CONSENT AGENDA ITEMS

The Board voted (8-0-0-1) on a motion to approve as presented consent agenda items 1, 2, and 3.

Board members Nancy Anderson, Irving Faunce, Donald Guimond, Ernest Hilton, Virginia Plummer, Matt Scott, Richard Wardwell and Nancy Ziegler voted to support the motion. Board member Jean T. Wilkinson was absent.

1. DWIGHT ALEXANDER, Belgrade – Administrative Consent Agreement and Enforcement Order (BLWQ – Land)
2. MICHAEL W. BECKER and CARTER DESIGN GROUP, Falmouth – Administrative Consent Agreement and Enforcement Order (BLWQ – Land)
3. M.E.C., LLC, Naples – Administrative Consent Agreement (BLWQ – Land)

III. Regular Agenda

1. PEREGRINE GROUP, LLC / DEP Order #L-020980-87-C-M (appeal by Sarah Trask and Orono Neighborhood Coalition)

Staff: Robin Clukey, Bureau of Land and Water Quality

The Board voted (8-0-0-1) on a motion to deny the appeal and the request for a public hearing by Sarah Trask and the Orono Neighborhood Coalition affirming the Commissioner's Order L-020980-87-C-M to grant an extension of the permit expiration date for 2 years and incorporates the findings, conclusions and conditions in Department Order L-020980-87-A-N. The draft proposed order was modified as follows:

5. Remedy Requested:

The appellants request that the Board deny the time extension request thereby reversing the December 8, 2002~~4~~ Department decision renewing the permits issued for the Penobscot...

THEREFORE, the Board.... The appeal of THE ORONO NEIGHBORHOOD COALITION and SARAH TRASK, and denies the request for public hearing.

The vote was taken pursuant to 38 M.R.S.A. 344 and 341-D(4) and 06-096 CMR Chapter 2.
Board members Nancy Anderson, Irving Faunce, Donald Guimond, Ernest Hilton, Virginia Plummer, Matt Scott, Richard Wardwell and Nancy Ziegler voted to support the motion. Board member Jean T. Wilkinson was absent.

BOARD TO RECONVENE TO CONDUCT A PUBLIC HEARING(S):

Chapter 143, New Source Performance Standards (NSPS / Amendment)
Chapter 144, National Emission Standards for Hazardous Air Pollutant (NESHAP) /
Amendment

BOARD OF ENVIRONMENTAL PROTECTION
Holiday Inn / Ground Round, Augusta at 9:00 a.m.

March 3, 2005

I. DEPARTMENTAL

- A. Commissioner's Comments
- B. Chairman's Comments
- C. Executive Analyst Comments
- 001 D. Board Calendar
- E. Departmental Orders / Applications Accepted for Processing
- F. Executive Session

ADMINISTRATIVE CONSENT AGREEMENT:
Proposed wastewater discharge enforcement resolution open for public comment
Pursuant to 38 M.R.S.A. §347-A(6)

Davis Forestry Products, Inc and H. Cary Brown, Weston (Staff: James Beyer 941-4570)

Tentatively scheduled for Board action on March 17, 2005

II. CONSENT AGENDA ITEMS

- 003 1. DWIGHT ALEXANDER, Belgrade – Administrative Consent Agreement and Enforcement Order (BLWQ – Land)
- 007 2. MICHAEL W. BECKER and CARTER DESIGN GROUP, Falmouth – Administrative Consent Agreement and Enforcement Order (BLWQ – Land)
- 011 3. M.E.C., LLC, Naples – Administrative Consent Agreement (BLWQ – Land)

III. REGULAR AGENDA ITEMS

- 015 1. PEREGRINE GROUP, LLC / DEP Order #L-020980-87-C-M (appeal by Sarah Trask and Orono Neighbor Coalition)
Staff: Robin Clukey, Bureau of Land and Water Quality

BOARD TO RECONVENE TO CONDUCT A PUBLIC HEARING(S):

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Next Regular Board Meeting – Thursday, March 17, 2005 – Holiday Inn / Ground Round, Augusta